



July 14, 1999

Mr. Oscar G. Trevino
Walsh, Anderson, Brown, Schultz & Aldridge
P.O. Box 2156
Austin, Texas 78768

OR99-1958

Dear Mr. Trevino:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 125900.

The Mercedes Independent School District (the "district"), which you represent, received a request for a variety of information relating to the conduct and licensure of Ms. Vivian Ortega. The request was made as part of an investigation conducted by the State Board of Educator Certification. Although you indicate that you have released much of the requested information, you claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g and section 21.355 of the Education Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial. This section encompasses information protected by other statutes. We note that you have redacted information which apparently identifies a particular student. Such information is subject to FERPA and sections 552.114 and 552.026 of the Government Code. FERPA specifies the conditions of release of "education records" and prohibits release except as so provided. "Education records" are records that

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4)(A). *See also* Open Records Decision Nos. 462 (1987), 447 (1986).

An educational agency or institution subject to FERPA may disclose personally identifiable information from education records, without first obtaining the parent's prior written consent, when the agency or institution seeks advice from the Attorney General whether a particular disclosure would violate FERPA. *See* 20 U.S.C. §§ 1232(g)(b)(C), (b)(3) and (b)(5). However, in Open Records Decision No. 634 (1995), this office held: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA without the necessity of requesting an attorney general decision, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. Thus, where an institution is unsure of the application of FERPA to specific information, it may disclose that information to this office for review. As you have requested our opinion in this case, we find that the redacted information may only be released in accordance with the provisions of FERPA.

We note, however, that information may generally be transferred between governmental agencies which are subject to the Public Information Act and have a related administrative aim without destroying the confidential nature of the information. Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are grounded in the well settled policy of the state that state agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* Open Records Decision No. 516 (1989). These decisions also recognize that a release to a state agency is not a release to the public for purposes of Government Code section 552.007, which prohibits the selective disclosure of information, or Government Code section 552.352, which provides criminal penalties for the release of information considered to be confidential. *See id.* This transfer doctrine does not apply where the conditions of release of the information is specified by a statute such as FERPA. Thus, with the exception of the information subject to FERPA, you may transfer the requested information to the State Board for Educator Certification without waiving the district's ability to raise its discretionary exceptions in the future or implicating breaches of confidentiality.

You next argue that the submitted documents are confidential under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Section 21.355 of the Education Code provides, "[a]ny document evaluating the performance of a teacher or administrator is confidential." This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). After reviewing the documents at issue, we conclude that the documents are not teacher evaluations and may not be withheld under section 21.355 of the Education Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely

A handwritten signature in black ink that reads "Sam Haddad". The signature is fluid and cursive, with a large loop at the beginning.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 125900

cc: Mr. Doug Phillips
Office of Investigations & Enforcement
State Board for Educator Certification
1001 Trinity
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(w/o enclosures)